IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 972/2006

Judgment delivered on: October 04, 2007

New India Assurance Co. Ltd. ..... Appellant
Through: Mr.P.K. Seth, Adv.

versus

Smt.Shashi Rani & Ors. ..... Respondents
Through: Ms.Aruna Mehta, Adv. for the respondent Nos.1 to 5.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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The only ground arising in the present appeal is that on the date of accident, the offending vehicle was not insured by the appellant. The accident in the present case had occurred on 25.8.1998. The appellant in the written statement at Para 17 has

taken an objection that the cover note in favour of the insured was issued on 31.8.1998 at 3.15 p.m. and premium of Rs.11,305/- including service tax of Rs.538/- was received vide receipt No.0662833 dated 31.8.1998 and the same was presented for collection vide collection No.2233 dated 31.8.1998. Based on the said cover note, the policy was issued on 31.9.1998 for the period 31.8.1998 to 30.8.1999 insuring the vehicle bearing registration No.DL-IP-4395. For better appreciation of the arguments of counsel for the appellant, the said Para 17 of written statement is reproduced as under:-

> "17. In reply to para 17 of the petition it is submitted that the answering respondent had issued a Cover Note bearing No.144157 dated 31.8.98 at 3.15 p.m. The premium of Rs.11305/- including Service Tax of Rs.538/- was received vide receipt no.0662833 dated 31.8.98 and the same was presented for collected vide Collection No.2233 dated 31.8.98. The policy Number was allotted on 31.9.98 itself as 3132160001836 for the period 31.8.98 to 30.8.99 insuring vehicle bearing No.DL-IP-4395 on the representation of Ms.Hazra Begum, to be the registered owner but unless it proved that respondent no.1 was holding a valid driving licence and riving under the authority and control of the insured. No liability can be imposed on the answering respondent. -It is further submitted that the vehicle was not insured on 25.8.98 vide the aforesaid policy and the photocopy showing the period as 21.8.98 to 20.8.99 filed in the Court by the petitioner seems to be ingenuine and forged. The Original in possession of respondent No.2 be called for

inspection of the Hon'ble Court."

Mr.P.K. Seth, counsel appearing for the appellant contends that fraud has been played by the owner/respondent No.6 by carrying out certain manipulations so as to show that the policy was valid on the date of the accident. Counsel contends that fraud vitiates the entire legal proceedings and objection to this effect can be taken at any stage of the case including at the stage of appeal. Counsel further contends that the Tribunal has not returned any finding on the said objection taken by the appellant/respondent.

Ms. Aruna Mehta, counsel appearing for the respondent Nos.1 to 5 contends that no such fraud as alleged by the appellant has been played. Counsel further contends that pursuant to the directions given by the Tribunal, original policy was placed by the owner of the said vehicle. Counsel has invited my attention to the original policy placed on the Trial Court record. Perusal of the same shows that the policy bearing No.3132160001836 insuring the vehicle bearing registration No. DL-IP-4395 was valid for the period w.e.f. 21.8.1998 till 20.8.1999. Counsel thus, contends that the allegations of fraud on the part of the appellant are preposterous.

I have heard learned counsel for the parties. It is a cardinal principle of law that parties can tell lie but the documents cannot. A bare perusal of original policy placed on the Trial Court record clearly shows that policy bearing No. 3132160001836 is in the name of the owner of the vehicle Smt.Hazra Begam, W/o Abdul Rasid. The said vehicle bearing registration No. DLIP 4395, Model Tata Bus was duly insured against a receipt of net premium of Rs.11,305/- and the same was valid for the period w.e.f. 21.8.1998 till 20.8.1999. The said policy also bears the collection number 2233 dated 21.8.1998. Only down below at the column of the witness, the date of 31.8.1998 somehow appears, which shows that the said policy was signed at Ghaziabad only on 31.8.1998. Be that as it may, once the original policy placed on record by the owner shows that the same was valid for the period w.e.f. 21.8.1998 till 20.8.1999, the authenticity and genuineness of the same cannot be doubted unless any evidence to the contrary is led by the insurance company issuing the said policy. No such evidence was led by the appellant insurance company so as to prove their contention in the written statement that the policy in question was valid w.e.f. 31.8.1998 till 30.8.1999. In the written statement, the objection was taken that the premium of

Rs.11,305/- including service tax etc. was received by the insurer vide receipt No.0662833 dated 31.8.1998 and the same was presented for collection vide collection No.2233 dated 31.8.1998. These allegations contained in Para 17 of the written statement were never substantiated by the appellant. Rather the original policy shows that the collection No.2233 was also issued on 21.8.1998 and not on 31.8.1998 as alleged by the appellant in the written statement. In the absence of any evidence to the contrary, the creditworthiness of the said original policy placed on record by the insured cannot be impinged.

The essence of insurance business is the coverage of risk by undertaking to indemnify the insured against loss or damage. The insurers agree to pay the damages arising out of any accident by taking a chance that no accident might happen. Motivation of insurance business is that the premium would turn to be the profit of the business in case no damage occurs. Now, when the money has been received by the insurance company and an accident has occurred so equity demands that insurer should make good the losses.

There is no merit in the appeal and the same is dismissed.

October 04, 2007 **KAILASH GAMBHIR, J.**
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